

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ROBIN G. THORNTON,  
on behalf of herself and others  
similarly situated, and  
WENDY IRBY, on behalf of  
herself and Others similarly  
situated

Plaintiffs,

v.

No. 1:20-cv-1040 JB/LF

THE KROGER COMPANY,  
ALBERTSONS,  
PAY AND SAVE, INC.

Defendants.

**UNOPPOSED MOTION OF DEFENDANT PAY AND SAVE, INC.  
TO CONSOLIDATE BRIEFING ON MOTION TO DISMISS,  
EXTEND PAGE LIMITS, ESTABLISH BRIEFING SCHEDULE AND  
ADOPT BY REFERENCE DEFENDANTS' PLEADINGS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Pay and Save, Inc. (hereinafter, Pay and Save) by and through its attorneys of record, and pursuant to D.N.M.LR-Civ. 7.2, hereby submits its Unopposed Motion to Consolidate Briefing on Motion to Dismiss, Extend Page Limits, Establish Briefing Schedule, and Adopt by Reference Defendants' Pleadings as follows:

1. Plaintiff Robin G. Thornton ("Plaintiff Thornton") commenced this action by filing a Complaint on September 3, 2020, in the Second Judicial District Court for the State of New Mexico, in and for the County of Bernalillo, styled *Robin G. Thornton v. The Kroger Company, et al.*, Case No. D-202-CV-2020-05018. The matter was removed. in 2020. (Doc. 1 10/08/2020)
2. This Court rendered a stipulated order granting Defendants' Unopposed Motion to Consolidate Briefing on Motion to Dismiss, Extend Page Limits, and Establish Briefing Schedule. (Doc. 13 11/90/2020).

3. Plaintiff Wendy Irby (“Plaintiff Irby”) was added by virtue of Plaintiffs’ Second Complaint. (Doc. 60, 11/30/2021).

4. Plaintiffs added Pay and Save to this suit by their Third Amended Class Action Complaint (“Complaint” Doc. 97 01/19/2022). Plaintiffs’ Complaint asserts claims similar to those as against The Kroger Company and Albertson’s LLC (“other Defendants”) against Pay and Save.

5. Pay and Saves plans to move to dismiss Plaintiffs’ claims. Plaintiffs and all Defendants (collectively, the “Parties”) have agreed, in the interest of judicial economy, that Pay and Save should consolidate briefing and file a single Motion to Dismiss.

6. The Parties have also agreed to a briefing schedule that will accommodate the needs of each of the Parties to this action. Specifically, Pay and Save’s Motion to Dismiss will be due on February 17, 2022. Plaintiffs’ Response to the Motion to Dismiss will be due on February 24, 2022. Pay and Save’s Reply in Support of the Motion to Dismiss will be due on March 3, 2022.

7. In addition, the Parties have agreed to extend the page limits set forth in D.N.M.LR-Civ. 7.5 to allow the Motion to be filed up to thirty-five (35) double-spaced pages in length, the Response to be filed up to thirty-five (35) double-spaced pages in length, and the Reply to be filed up to twenty-five (25) double-spaced pages in length.

8. In addition, the Parties have agreed to permit Pay and Save to adopt as if re-typed verbatim all previous pleadings filed by other Defendants pursuant to Federal Rule of Civil Procedure 10.

9. In accordance with the requirement of D.N.M.LR-Civ. 7.1, the undersigned have sought concurrence in this Motion from all counsel. The Parties do not oppose this Motion. As a result, in accordance with the requirements of D.N.M.LR-Civ. 7.2, a proposed order approved by each party will be submitted to the Court concurrently with the filing of this Unopposed Motion.

**WHEREFORE**, Defendant Pay and Save, Inc., respectfully requests the Court enter its proposed Order allowing Pay and Save to consolidate its briefing and file a single Motion to Dismiss in this matter, adopt the briefing schedule proposed by the Parties, allow for an extension of the page limits in connection with the Motion to Dismiss briefing, and permit Pay and Save to adopt by reference all documents previously filed by Defendants The Kroger Company and Albertson's LLC.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27<sup>th</sup> day of January 2022, I filed the foregoing electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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